

Internal Revenue Service

District
Director

Department of the Treasury

1100 Commerce St., Dallas, Texas 75242

Date: MAR 20 1995

Person to Contact:

Telephone Number:

Refer Reply To:

Dear Sir or Madam:

We have considered your Application for recognition of exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code.

The information submitted indicates that you were incorporated on [REDACTED]. Your Articles of Incorporation state that the organization was organized for exclusively charitable and educational purposes within the meaning of Internal Revenue Code (IRC) section 501(c)(3) and for various other purposes relating to the dissemination of life generally, and humanity particularly, throughout the confines of the [REDACTED] and its immediate environs, to a distance not exceeding [REDACTED] from the [REDACTED]. Your articles also state that a specific purpose of the organization is establishing and maintaining [REDACTED], including [REDACTED] throughout the region noted above.

You intend to accomplish your purpose with several activities. You state that a [REDACTED] is the organization's main event held each year. The [REDACTED] is an annual convention at which members meet and hear presentations on the organization's plans and activities. A fund-raising auction of donated art and a benefit concert are also held during the [REDACTED].

Another activity of the organization is the [REDACTED] project. The purpose of the project is to build a demonstration [REDACTED] to be located on [REDACTED]. The [REDACTED] is to be built as an educational resource, exhibiting many of the systems and techniques which will enable the organization to [REDACTED]. Development of this site will also include the construction of a resort, hotel and marina for tourists, students and visiting scientists. The resort, hotel and marina are to be financed, built and operated by separate and distinct business entities. The ownership of entities was not provided.

Various members of the organization have been grouped into teams for various projects relating to technologies and systems essential to sea and space colonization. These projects cover such subjects as [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], marine mammals, [REDACTED], architecture, closed system habitat, hydroponics culture, fresh water and air conditioning.

An [REDACTED] facility financed, built and owned by [REDACTED] will provide power, fresh water and air conditioning for the hotel, resort and marina as well as the other aspects of the [REDACTED]. You indicate that [REDACTED] is a private company wholly unrelated to the organization.

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[REDACTED]

The entire [REDACTED] project will be developed by a private for profit company, [REDACTED]. The organization will lease facilities from [REDACTED] to operate research facilities and the demonstration [REDACTED]. Tourism concessions, commercial mariculture, horticulture, and other for profit enterprises will be operated by [REDACTED]. This for profit entity is as yet unincorporated and the ownership is unknown.

The organization receives a 7% commission on monthly phone charges from [REDACTED] for anyone who signs up for this long-distance service through the organization's solicitation. Other funds of the organization are raised through registration fees for the [REDACTED] membership dues and donations. Of the \$ [REDACTED] received by the organization during the year ending December 31, 1993, \$ [REDACTED] was received from the four members of the board of directors as follows:

[REDACTED]	\$ [REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

	\$ [REDACTED]
	=====

The organization is cooperating with a commercial software development firm to develop and market [REDACTED]

[REDACTED] is a book written by [REDACTED]. Chapter 8 of this book details the formation of this organization to implement the steps noted in the book for [REDACTED]. The first edition of the book was printed by [REDACTED]. A second edition of the book was published by [REDACTED] and marketed in [REDACTED]. The organization holds no rights to this book. [REDACTED] is the general partner and [REDACTED] is the sole limited partner.

The governing body of the organization consists of a board of directors with four members. [REDACTED], the author of the book on which the organization is based, is chairman of the board. [REDACTED], a member of the board is [REDACTED], a member of the board, is [REDACTED]. The remaining member of the board, [REDACTED], is not related to the other board members. The registered agent for the organization, [REDACTED]

Two levels of membership in the organization are provided. [REDACTED] is \$ [REDACTED] per year for individuals and \$ [REDACTED] for couples. [REDACTED] is \$ [REDACTED] per year. Individuals who can't pay the \$ [REDACTED] fee for [REDACTED] member designation are given the option of selling [REDACTED] first edition copies of [REDACTED] by consignment with \$ [REDACTED] of each sale going to the publisher and the organization getting the remaining \$ [REDACTED] in lieu of the membership fee. Core members actively participate in the governing body of the organization and make many of the decisions that determine the course of the organization. Systems of determining seniority and net contributions

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will be determined in the future. These systems will be instrumental in determining what benefits of organization membership each [REDACTED] is entitled to, e.g. priority for residence in the organization's [REDACTED] etc.

[REDACTED] members receive the organization's newsletter and other updates on the organization's activities, but are not voting members of the governing body.

Section 501(c) of the Code describes certain organizations exempt from Federal income tax under section 501(a) and reads, in part, as follows:

"(3) Corporations, *** fund, or foundation, organized and operated exclusively for religious, charitable, scientific, *** literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office."

Section 1.501(c)(3)-1 of the regulations provides, in part, as follows:

"(d)(1)(ii) An organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of this subparagraph unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests."

Revenue Ruling 76-206, 1976-2 C.B. 154, states that a nonprofit organization formed to generate community interest in the retention of classical music programs by a local for profit radio station by seeking program sponsors, encouraging continuation of contracts by existing sponsors, soliciting subscriptions to the station's program guide, and distributing materials promoting the classical music programs, all of which activities tend to increase the station's revenue, does not qualify for exemption under IRC section 501(c)(3).

In the case of *Better Business Bureau of Washington, D.C., Inc. v. U.S.*, 326 U.S. 279 (1945), the United States Supreme Court concluded that the presence of a single nonexempt purpose, if substantial in nature, will preclude exemption from federal income tax regardless of the number or importance of the exempt purposes of an organization.

The operation of a hotel, resort and marina are not activities related to the organization's stated exempt purposes. In addition, the information submitted demonstrates that you are organized and operated to support the activities of a nonexempt, for profit purpose -- the sales of [REDACTED]. As described in Revenue Ruling 76-206, and *Better Business Bureau of Washington, D.C. v. U.S.*, an organization whose purpose and activities are to benefit a for-profit organization

in more than an incidental way is not operated exclusively for purposes described in IRC 501(c)(3), but rather serves a private interest within the meaning of Income Tax Regulations section 1.501(c)(3)-1(d)(1)(ii). Further private benefit is also indicated by the membership structure of the organization in that [REDACTED] members receive benefits from the organization that are determined by their monetary and physical involvement in the organization.

Accordingly, it is held that you are not entitled to exemption from Federal Income Tax as an organization described in IRC section 501(c)(3), and you are required to file Federal Income Tax Returns on Form 1120.

If you do not agree with these conclusions, you may, within 30 days from the date of this letter, in duplicate a brief of the facts, law, and argument that clearly sets forth your position. If you desire an oral discussion of the issue, please indicate this in your protest. The enclosed Publication 892 gives instructions for filing a protest.

If you do not file a protest with this office within 30 days of the date of this report or letter, this proposed determination will become final.

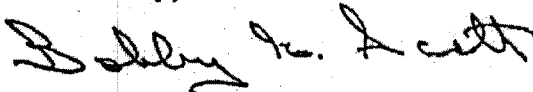
If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Code as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that, "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

If this determination letter becomes a final determination, we will notify the appropriate State Officials, as required by section 6104(c) of the Code, that based on the information we have, we are unable to recognize you as an organization of the type described in Code section 501(c)(3).

If you agree with these conclusions or do not wish to file a written protest, please sign and return Form 6018 in the enclosed self-addressed envelope as soon as possible.

If you have any further questions, please contact the person whose name and telephone number are shown at the beginning of this letter.

Sincerely,



Bobby E. Scott
District Director

Enclosures:
Publication 892
Form 6018

Internal Revenue Service
Midstates Region

Department of the Treasury
Appeals Office
55 North Robinson, Suite 939
Oklahoma City, OK 73102

Date: FEB 22 1996

Person to Contact:

Telephone Number:

Employer Identification Number

CERTIFIED MAIL

Dear Sir or Madam:

We considered your appeal of the adverse action proposed by your Key District Director in his letter dated March 20, 1995. This is a Final Adverse determination with respect to your exempt status under section 501(c)(3) of the Internal Revenue Code ("Code") and your application for recognition of exemption.

Based on our review of the information provided and our discussions with your representative, your organization does not qualify for exempt status under section 501(c)(3) of the Code.

Section 501(c)(3) of the Code provides for the exemption from Federal Income Tax of corporations organized and operated exclusively for religious, charitable, literary, scientific, and educational purposes; no part of the net earnings of which enure to any private shareholder or individual.

Revenue Ruling 76-206, 1976-2 C.B. 154, states that a non-profit organization formed and operated to support the promotion of a non-exempt, for profit purpose does not qualify under IRC 501(c)(3). It is concluded that your organization is pursuing several non-exempt purposes, which are substantial in nature, including the promotion of [REDACTED] and the development and operation of a planned hotel, resort and marina.

You are not organized or operated as a charitable organization. Specifically, you have failed to demonstrate that your organization's purposes and activities are exclusively charitable.

Accordingly, it is held that you are not entitled to exemption from Federal Income Tax as an organization described in IRC 501(c)(3) of the Code.

DET NO.
Exhibit

[REDACTED]

Contributions made to your organization are not deductible under section 170 of the Internal Revenue Code.

You are required to file Federal Income Tax returns (Form 1120) with the Service Center for the taxable years for which filing date of the appropriate return has passed. These returns should be filed within (90) days of the date of this letter, unless a request for extension of time is granted. Please send them to the attention of EP/EO Division, attach a copy of this letter, and address any requests for time extensions to the EP/EO Division at the Service Center. Processing of an income tax return and assessing any taxes due will not be delayed because a petition for declaratory judgment has been filed under section 7428 of the Internal Revenue Code.

We will notify the appropriate State officials, as required by section 6104(c) of the Code, that based on the information we have available, we are unable to recognize you as an organization described in section 501(c)3 of the Internal Revenue Code.

If you decide to contest this determination in Court, a petition for a declaratory judgment proceeding in the United States Tax Court, the United States Court of Claims, or the United States District Court for the District of Columbia must be filed within 90 days from the date this determination was mailed to you.

The enclosed Publication 892 provides information about filing suit in these Courts.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Thank you for cooperation

Sincerely,



Ralph G. Messenger
Associate Chief, Appeals

CC: [REDACTED]

Enclosure: As stated